

SENATE BILL 3109
By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, Part 21; Title 62 and Title 67, Chapter 4, Part 17, relative to sports agents.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, Part 21, is amended by deleting Part 21 in its entirety and substituting instead the following:

Section 49-7-2101. As used in this part unless the context otherwise requires:

(1) "Agent contract" means a contract or agreement in which a student athlete authorizes an sports agent to represent the student in the marketing of the student's athletic ability or athletic reputation;

(2) "Attorney General" means the attorney general and reporter of this state;

(3) "Contact" means communication between an sports agent and a student athlete, by whatever means, directly or indirectly, for the purpose of entering or soliciting entry into an agent contract;

(4) "Financial services" means the counseling on or the making or execution of investment and other financial decisions by the agent on behalf of the student athlete;

(5) "Institution" means any public or private institution of higher education in the state of Tennessee;

(6) "National collegiate athletic association" means a national collegiate athletic association with one (1) or more member institutions in forty (40) or more

states, including Tennessee, and “governing national collegiate athletic association” means the national collegiate athletic association of which the institution is a member;

(7) “Participation” means practicing, competing, or otherwise representing a institution in intercollegiate athletics.

(8) “Period of eligibility” refers to athletic eligibility and is that period of time beginning with the student athlete’s enrollment at such institution and ending with the last intercollegiate competition in which the student athlete is permitted to compete under rules of such institution’s governing national intercollegiate athletic association, notwithstanding any disqualification under such rules;

(9) “Person” means an individual, company, corporation, association, partnership or other legal entity, except it does not mean a government or governmental agency or subdivision;

(10) “Rescindability period” means that period of twenty (20) days following expiration of the student athlete’s period of eligibility;

(11) “Secretary” means the Tennessee secretary of state;

(12) “Sports agent” means a person, his agents and employees, who directly or indirectly, recruits or solicits any student athlete to enter into any agent contract or professional sport services contract, or who for a fee procures, offers, promises or attempts to obtain employment for any student athlete with a professional sport team or as a professional athlete. The term includes an attorney licensed by any state who acts as a sports agent for any student athlete but does not include an attorney in his capacity as legal counsel for such student athlete in advising such student athlete with respect to contractual matters involving a career in professional sports; and

(13) “Student athlete” means any student who:

(A) Resides in Tennessee, has informed, in writing, a institution of the student's intent to participate in that school's intercollegiate athletics or who does participate in that school's intercollegiate athletics and is eligible to do so; or

(B) Does not reside in Tennessee, but has informed, in writing, a institution in Tennessee, of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so.

Section 49-7-2102.

(a) Any person who practices as or engages in the conduct of a sports agent in this state must have a permit to do so issued by the secretary of state pursuant to this section.

(b) A person shall be issued a permit as a sports agent if the applicant:

(1) Is at least eighteen (18) years of age;

(2) Has completed the application form and remitted a permit fee of two hundred fifty dollars (\$250) and the occupational privilege tax under Title 67, Chapter 4, Part 17.

(3) Has affirmed that the applicant has not in any jurisdiction, within the preceding five (5) years, been convicted, found guilty of or entered a plea of nolo contendere for, regardless of adjudication, a crime which relates to the applicant's practice or ability to practice as a sports agent;

(4) Has affirmed that the applicant has not in any other jurisdiction had a sports agent license or permit suspended or revoked for a violation of the law of that jurisdiction nor has a civil judgment been entered against such applicant for damages caused to an institution as a result of a violation of the sports agent law of that jurisdiction; and

(5) Has posted with the secretary a fifteen thousand dollar (\$15,000) surety bond issued by an insurance company authorized to do business in this state. The bond shall be in favor of the state of Tennessee, secretary of state, for the use and benefit of any student athlete or institution within Tennessee that is injured or damaged, including reasonable costs and attorney's fees, as a result of acts or omissions by the sports agent pursuant to a permit issued under this part. The bond shall provide that the sports agent is responsible for the acts or omissions of any representatives acting under the sports agent's supervision or authority. The bond shall be in effect for and cover all times that the sports agent has an active permit and conducts business pursuant to that permit in this or any other state.

(c) The applicant shall by signing the application affirm, under penalty of perjury , that all information contained thereon is true and correct.

(d) A permit issued to an sports agent is not transferable.

(e) A person who does business in this state as a sports agent, regardless of whether such person has a permit issued pursuant to this part, shall by so doing consent to the jurisdiction of the courts of this state, shall be subject to suit in this state and shall be deemed to have appointed the secretary of state as such person's agent to accept service of process in any civil action commenced against such person as provided in Tennessee Code Annotated, Section 20-2-203.

Section 49-7-2104.

(a)(1) In addition to the violations, penalties and liabilities set forth in this part, contractual relationships between sports agents and student athletes shall be governed by the terms of this section.

(2) For the purposes of this part, “contractual relationships” include , but are not limited to:

(A) A contract to represent the student athlete in pursuing a professional sports career;

(B) Loans or advances of money in any way connected with the student athlete pursuing a professional sports career; or

(C) Providing services or material goods in any way connected with the student athlete pursuing a professional career in sports.

(b)(1) A contract between a sports agent and a student athlete must be:

(A) In writing;

(B) Signed by both the sports agent and the student athlete in the presence of a notary public who shall duly notarize the same;

(C) Include the address of the sports agent to which notices may be sent; and

(D) State the fees and percentages to be paid by the student athlete to the sports agent.

(2) The contract must contain the following paragraphs in ten (10) point, bold type, and each of the following paragraphs must be dated and initialed by the student athlete:

WARNING TO THE STUDENT ATHLETE: WHEN YOU SIGN THIS CONTRACT, YOU WILL LIKELY IMMEDIATELY LOSE YOUR ELIGIBILITY TO COMPETE IN INTERCOLLEGIATE ATHLETICS. TO AVOID DISCIPLINARY PROCEEDINGS BY YOUR INSTITUTION, YOU MUST GIVE WRITTEN NOTICE THAT YOU HAVE ENTERED INTO THIS CONTRACT TO THE ATHLETIC DIRECTOR OR PRESIDENT OF YOUR INSTITUTION WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT OR PRIOR TO PARTICIPATING IN INTERCOLLEGIATE ATHLETICS, WHICHEVER COMES

FIRST. FAILURE TO PROVIDE THIS NOTICE SUBJECTS YOU TO DISCIPLINARY SANCTION BY YOUR INSTITUTION. DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT AND FILLED IN ANY BLANK SPACES. PURSUANT TO TENNESSEE LAW, YOU AS A STUDENT ATHLETE SIGNING THIS CONTRACT HAVE THE RIGHT TO RESCIND THIS CONTRACT WITHIN TWENTY (20) DAYS OF (i) THE SIGNING OF THIS CONTRACT, (ii) NOTICE OF THIS CONTRACT BEING RECEIVED BY THE CHIEF EXECUTIVE OFFICER OF YOUR INSTITUTION, OR (iii), IF NO NOTICE IS GIVEN TO YOUR INSTITUTION, YOUR LAST INTERCOLLEGIATE GAME, WHICHEVER OCCURS THE LATEST. HOWEVER, EVEN IF YOU CANCEL THIS CONTRACT, THE INTERCOLLEGIATE ATHLETIC ASSOCIATION OR CONFERENCE TO WHICH YOUR INSTITUTION BELONGS MAY NOT RESTORE YOUR ELIGIBILITY TO PARTICIPATE IN INTERCOLLEGIATE ATHLETICS. IF YOU SIGN THIS CONTRACT PRIOR TO YOUR LAST INTERCOLLEGIATE GAME AND DO NOT NOTIFY YOUR INSTITUTION OF THIS CONTRACT, YOUR TEAM MAY BE REQUIRED TO FORFEIT ALL GAMES IN WHICH YOU PARTICIPATE THEREAFTER, AND YOU MAY CAUSE YOUR TEAM TO BE INELIGIBLE FOR POSTSEASON GAMES.

This notice provision may not be incorporated by reference and each contract shall include its provisions verbatim. Such notice provisions are solely for the purpose of advising the student athlete of the possible effects of his signing the agency contract and some of his rights.

(3) A duly signed and notarized copy of the contract shall be furnished to the student athlete at the time of execution.

(4) A sports agent and a student athlete who enter into an agent contract must provide written notice of the contract to the athletic director or the president of the institution in which the student athlete is enrolled. The sports agent and

the student must give the notice before the contracting student athlete practices or participates in any intercollegiate athletic event or within seventy-two (72) hours after entering into said contract, whichever comes first. Notice shall be in writing and for the sports agent shall be via registered or certified mail. Failure of a student athlete to provide the notification shall subject the student to disciplinary action in accordance with the institution's rules and regulations for student conduct.

(5)

(A) Within twenty (20) days of the last of the following to occur, the student athlete shall have the right to rescind the contract or any contractual relationship with the sports agent, by giving notice in writing to the sports agent of his intent to rescind:

(i) Date on which the contractual relationship between the sports agent and the student athlete arises;

(ii) Notification, as provided in subdivision (b)(4), of such contractual relationship is received by the chief executive officer of the student athlete's institution; or

(iii) If such notification as required in subdivision (b)(4) is not given, expiration of the eligibility period of the student athlete.

(B) The student athlete may not under any circumstances effect a waiver of the right to rescind, and any attempted waiver of the right to rescind shall be ineffective.

(6) In addition to the rights to rescind as provided in subdivision (b)(5), any contract dated during the rescindability period may be rescinded by the student athlete prior to the expiration of the rescindability period.

(7) The contract shall be governed by the laws of the state of Tennessee.

(8) Failure of sports agent to comply with the terms of this part, including but not limited to, notification as required in subdivision (b)(4), shall render such contract void and unenforceable as between the sports agent and the student athlete and subject the sports agent to criminal penalties, civil liability and disciplinary action under this part.

(9) Postdating of contracts regulated by this part is prohibited and any such postdated contract shall be void and unenforceable. Execution of a postdated contract shall be deemed a violation of this part. A sports agent shall not enter into an agent contract that purports to or takes effect at a future time after the student athlete no longer has remaining eligibility to participate in intercollegiate athletics. Such a contract is void and unenforceable.

(10) Any money, things of value, extra benefits or any other form of consideration given by a sports agent to a student athlete may be retained by the student athlete and shall be deemed a gift if:

(A) The student athlete rescinds his contractual relationship with the sports agent as provided herein; or

(B) The contract between the student athlete and the sports agent is void and unenforceable for failure to comply with the terms of this part.

(11) An agent contract between a student athlete and a person who does not have a sports agent permit issued pursuant to this part is void and unenforceable.

Section 49-7-2105.

(a) The following acts shall constitute violations of this section and may result in the revocation or suspension of a sports agent's permit:

(1) A violation of any law relating to the practice as a sports agent including, but not limited to, violations of this part;

(2) Failure to account for or to pay, within a reasonable time, not to exceed thirty (30) days, assets belonging to another which have come into the control of the sports agent in the course of conducting business as an sports agent;

(3) Any conduct as a sports agent which demonstrates bad faith or dishonesty;

(4) Commingling money or property of another person with the sports agent's money or property. Every sports agent shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through the sports agent;

(5) Accepting as a client a student athlete referred by and in exchange for any consideration made to an employee of or a coach for an institution located in this state;

(6) Offering anything of value to any person to induce a student athlete to enter into an agreement by which the agent will represent the student athlete. However, negotiations regarding the agent's fee shall not be considered an inducement;

(7) Knowingly providing financial benefit from the licensee's conduct of business as a sports agent to another sports agent whose license or permit to practice as an sports agent is suspended or has been revoked within the previous five (5) years;

(8) Committing mismanagement or misconduct as a sports agent which causes financial harm to a student athlete or institution;

(9) Failing to include the sports agent's name and permit number in any advertising related to the business of a sports agent. Advertising shall not include clothing or other novelty items.

(10) Publishing or causing to be published false or misleading information or advertisements, or giving any false information or making false promises to a student athlete concerning employment or financial services;

(11) Violating or aiding and abetting another person to violate the rules of the athletic conference or collegiate athletic association governing a student athlete or student athlete's institution;

(12) Having contact, as prohibited by this part, with a student athlete;

(13) Postdating agent contracts; or

(14) Having a sports agent certification acted against by a professional athletic club or association.

(b) It is not a violation of this section for an agent to:

(1) Send a student athlete written materials provided that the sports agent simultaneously sends an identical copy of such written materials to the athletic director, or the director's designee, of the institution in which the student athlete is enrolled or to which the student athlete has provided a written intent to participate in intercollegiate athletics; or

(2) Otherwise contact a student athlete, provided that the student athlete initiates the contact with the sports agent and the sports agent gives notice to the institution in which the student athlete is enrolled or to which the student athlete has provided a written intent to participate in intercollegiate of such contact.

(c) The secretary of state shall have the authority to revoke or suspend the permit of a sports agent for one (1) or more violations of subsection (a) of this section. A violation of such subsection shall be brought to the attention of the

secretary by a written complaint filed by any institution or student athlete aggrieved by the violation. If the secretary finds from the complaint that there is reasonable cause to believe a violation of this section has occurred, the secretary shall commence a sports agent permit revocation or suspension proceeding. Such a proceeding shall be considered a contested case hearing and shall be conducted in accordance with the Tennessee uniform administrative procedures act, codified in Tennessee Code Annotated, Title 4, Chapter 5. Section 49-7-2106.

(a) An institution shall have a cause of action for damages against any person who violates this part, as provided by this section,. An institution may seek equitable relief to prevent or minimize harm arising from acts or omissions which are or would be a violation of this part.

(b) For purposes of this section, a institution is damaged if, because of activities of the person, a student or the institution is penalized or is disqualified or suspended from participation in intercollegiate athletics by a national association for the promotion and regulation of intercollegiate athletics or by an intercollegiate athletic conference and, because of that penalty, disqualification, or suspension, the institution:

- (1) Loses revenue from media coverage of a sports contest;
- (2) Loses ticket sales for regular season or post-season athletic events;
- (3) Loses the right to grant an athletic scholarship;
- (4) Loses the right to recruit an athlete;
- (5) Is prohibited from participating in post-season athletic competition;
- (6) Loses proceeds from any revenue sharing agreement or arrangement between institutions in an athletic conference;

(7) Forfeits an athletic contest; or

(8) Otherwise suffers an adverse financial impact.

(c) An institution that prevails in a suit brought under this section may recover:

(1) Actual damages;

(2) Punitive damages;

(3) Court costs;

(4) Reasonable attorney's fees; and

(5) Treble damages for any violation of this part which results in any ineligibility of a student athlete to compete, in an amount equal to three (3) times the value of the athletic scholarship furnished by the institution to the student athlete during the student athlete's period of eligibility

(d) An action under this section may be brought by the aggrieved institution.

(e) The student athlete and sports agent shall be jointly and severally liable for any damages awarded to an institution for a violation of the provisions of this part that occurred during such student athlete's period of eligibility.

Section 49-7-2107.

(a) It is an offense for a sports agent, or any person acting for or on behalf of a sports agent, to knowingly offer, give or loan anything of value to a student athlete, or any person acting for or on behalf of a student athlete, during such student athlete's period of eligibility for the purpose of inducing the student athlete to enter into an agreement, agent contract or professional sport services contract with such agent.

(b) It is an offense to conduct business as an sports agent unless such person holds an active permit issued pursuant to this part, and no person shall

knowingly aid or abet another person to conduct business as an unlicensed sports agent. For purposes of this section, "aid or abet" means to actively assist in the recruitment or solicitation of a student athlete.

(c) It is an offense for a sports agent to enter into an agent contract without giving notice of entering into such contract to the athletic director or institution president as required by Section 49-7-2104(b)(4).

(d) It is an offense for a person by verbal claim, advertisement, letterhead, card, or in any other way to represent such person to be an sports agent unless such person possesses a valid permit issued pursuant to the provisions of this Section 49-7-2102.

(e) A violation of subsection (a) or subsection (c) of this section is a Class E felony. A violation of subsection (b) or subsection (d) is a Class A misdemeanor.

Section 49-7-2108. For purposes of determining violations under this part, the rules of the governing national collegiate athletic association in effect July 1, 1996, and as amended from time to time thereafter by such association, shall apply.

Section 49-7-2109. Every sports agent shall post and conspicuously display the sports agent's permit, or legible copy thereof, in each office from which the sports agent conducts business as an sports agent and shall provide proof of such permit to any student athlete whom the sports agent contacts.

Section 49-7-2110.

(a) A sports agent who holds an active permit and engages in business as a sports agent shall establish and maintain complete financial and business records. The sports agent shall retain such financial or business records for at least four (4) years from the date of the entry.

(b) The secretary shall have access to and shall have the right to inspect and examine the financial or business records of a sports agent during normal

business hours. Refusal or failure of a sports agent to provide the secretary access to financial and business records shall be a basis for permit suspension or revocation by the secretary. The secretary may exercise its subpoena powers to obtain the financial and business records of a sports agent.

Section 49-7-2111. This part does not apply when a student is ineligible to participate in a particular intercollegiate sport unless:

(a) The student athlete's eligibility to participate is restored in that particular sport; or

(b) The student is or becomes eligible to participate in a different intercollegiate sport, in which case this part shall apply for the different intercollegiate sport.

Section 49-7-2112. Nothing in this part shall:

(a) Prevent a student athlete from relinquishing such athlete's eligibility to compete in intercollegiate athletics and then signing an agent contract; or

(b) Impair the validity of an agent contract entered into prior to the effective date of this act.

SECTION 2. Tennessee Code Annotated, Section 67-4-1702(a)(3), is amended by adding the following new subdivision:

() Sports agent.

SECTION 3. This act shall take effect on July 1, 1996, the public welfare requiring it.